



Federal Communications Commission
Washington, D.C. 20554

January 24, 2003

98-206

Mr. David Schwartz-Leeper
Vice President/GC
Nielsen Media Research
299 Park Avenue
New York, NY 10171

Dear Mr. Schwartz-Leeper:

This letter concerns the possible use of Designated Market Areas (DMAs) in connection with certain Commission licensing. On May 23, 2002, the Commission released a *Memorandum Opinion and Order and Second Report and Order* in which it adopted a licensing system for the new Multichannel Video Distribution and Data Service (MVDDS) based on Component Economic Areas. Prior to the release of the *Order*, Commission staff pursued the possibility of licensing the service on the basis of Nielsen Media Research's (Nielsen's) DMAs. Pursuant to contacts with Nielsen, the Commission declined to use DMAs because Nielsen was not willing at the time, to enter into an agreement with the Commission to permit the use of DMAs for the purpose of defining the license areas for MVDDS. The Commission explained in the *Order*, that if the Commission were to adopt DMAs, an MVDDS licensee who does not obtain a license (either through a blanket license agreement or some other arrangement) from Nielsen for use of DMAs may not rely on the grant of a Commission authorization as a defense to any claim of copyright infringement brought by Nielsen.

The Commission is currently evaluating the record received in response to the MVDDS order. As you know, there is continued interest among a number of potential MVDDS licensees in having the Commission assign licenses based upon DMAs. Pursuant to Commission staff contacts with you after the release of the *Order*, I understand that although Nielsen remains unwilling to enter into a formal agreement to allow the Commission to use its DMA designation for the MVDDS service areas, Nielsen does not object to the Commission's use of DMAs in this manner. If we have mischaracterized Nielsen's position on this issue, please let us know, in writing, within thirty days. We appreciate your consideration of this matter and thank you for your discussions with Commission staff.

Sincerely,

Thomas J. Sugrue
Chief
Wireless Telecommunications Bureau

Jane E. Mago
General Counsel
Office of General Counsel